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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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METZ LEWIS, LLC 11 STANWIX STREET 18TH FLOOR PITTSBURGH, PA 15222			PASS, NATALIE	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 02/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/595,660

Applicant(s)

TELLER ET AL.

Examiner

Natalie A. Pass

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 104-146 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 104-146 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10 & 12.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the amendment filed 28 November 2003. Claims 1-103 have been cancelled. Claims 104-146 have been newly added. Claims 104-146 remain pending. The IDS statements filed 14 July 2003 and 12 January 2004 have been entered and considered.

Specification

2. The amendment filed 28 November 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. "New matter" constitutes any material which meets the following criteria:

a) It is added to the disclosure (either the specification, the claims, or the drawings) after the filing date of the application, and

b) It contains new information which is neither included nor implied in the original version of the disclosure. This includes the addition of physical properties, new uses, etc. The added material which is not supported by the original disclosure is as follows:

- "wherein at least two sensors" as disclosed in claims 109 and 125, line 1
- "physiological sensors and contextual sensors" as disclosed in claims 109 and 125, line 2
- "comprising a third parameter" as disclosed in claims 110 and 126, line 3

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- "an individual status parameter that cannot be directly detected by any of said at least two sensors" as disclosed in claims 110 and 126, lines 4-5
- "aggregating said data indicative of one or more measured parameters with data collected from a plurality of individuals to create aggregate data" as disclosed in claim 122, lines 2-3;
- "the step of creating aggregate data reports based on said aggregate data" as disclosed in claim 123, lines 1-2;
- "wherein said information indicative of a suggested change in said individual's performance being based on aggregate data collected from a plurality of individuals" as disclosed in claim 128, lines 1-3;
- "said information indicative of a suggested change being further based on information obtained from a third party source" as disclosed in claims 129 and 133, lines 1-2 and 1-3 respectively;
- "said third party source comprises a computer and wherein said providing step is automated using said computer" as disclosed in claim 130 and 134, lines 1-2;
- "said third party source comprises a person" as disclosed in claims 131 and 135, lines 1-2;
- "said third party source comprises a computer and a person and wherein said providing step is automated using said computer" as disclosed in claims 132 and 136, lines 1-3.

In particular, Applicant does not point to, nor was the Examiner able to find, any support for this newly added language within the specification as originally filed on 16 June 2000. As

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such, Applicant is respectfully requested to clarify the above issues and to specifically point out support for the newly added limitations in the originally filed specification and claims.

Applicant is required to cancel the new matter in the reply to this Office Action.

3. If Applicant continues to prosecute the application, revision of the specification and claims to present the application in proper form is required. While an application can, be amended to make it clearly understandable, no subject matter can be added that was not disclosed in the application as originally filed on 16 June 2000.

4. The objection to the abstract of the disclosure because of undue length is hereby withdrawn due to the amendment filed 28 November 2003.

Claim Rejections - 35 USC § 112

5. Newly added claims 109-123, 125-146 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

(A) Claim 109-110, 122-123, 125-126, 128-136 recite limitations that are new matter, as discussed above, and is therefore rejected.

(B) Claims 111-121, 127, 137-146 incorporate the features of claims 109-110, 122-123, 125-126, 128-136 through dependency and are also rejected.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

NOTE: The following rejections assume that the subject matter added in 28 November 2003 amendment are NOT new matter, and are provided hereinbelow for Applicant's consideration, on the condition that Applicant properly traverses the new matter objections and rejections made in sections 2-3, and 5 above in the next communication sent in response to the present Office Action.

7. Claims 104-112, 114, 117, 119, 124-127, 137, 139, 142, 144 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, U.S. Patent Number 5, 951, 300, hereinafter known as Brown300, in view of Alyfuku et al, U.S. Patent Number 5, 410, 471.

(A) As per claim 104, Brown300 teaches a method for assisting an individual to monitor, control and modify certain aspects of the individual's physiological status according to a preset physiological status goal, the method comprising:

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establishing said physiological status goal according to certain preselected physiological parameters of said individual (Brown300; column 2, lines 57-67, column 6, lines 26-29, column 6, line 62 to column 7, line 18);

using said data indicative of one or more measured parameters to compare target parameters to actual parameters (reads on determine status information indicative of the relative degree of achievement of said individual's performance with relation to said physiological status goal) and providing said status information to said individual (Brown300; see at least Figure 3A, Item 32, column 1, lines 26-36, column 2, lines 6-9, column 2, line 57 to column 3, line 45 , column 5, lines 38-43, column 6, line 34 to column 7, line 18).

Brown300 fails to explicitly disclose
affixing a physiological monitoring device in proximity to the body of the individual; and
generating data indicative of one or more measured parameters of said individual using
said device.

However, the above features are well-known in the art, as evidenced by Alyfuku.

In particular, Alyfuku teaches

affixing a physiological monitoring device in proximity to the body of the individual
(Alyfuku; see at least Abstract, Figure 11, Item 91, Figure 19, Item 89, column 1, lines 7-17,
column 3, lines 20-31, column 4, line 30 to column 5, line 7, column 8, lines 45-51, column 11,
line 59 to column 12, line 4, column 12, line 54 to column 13, line 2, column 14, line 52 to
column 16, line 2, column 15, lines 9-25, column 17, lines 35-45, column 19, lines 16-26, 40-49,
column 20, lines 27-31, 46-48); and

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generating data indicative of one or more measured parameters of said individual using said device (Alyfuku; see at least Abstract, Figure 11, Item 91, Figure 19, Item 89, column 1, lines 7-17, column 3, lines 20-31, column 4, line 30 to column 5, line 7, column 8, lines 45-51, column 11, line 59 to column 12, line 4, column 12, line 54 to column 13, line 2, column 14, line 52 to column 16, line 2, column 15, lines 9-25, column 17, lines 35-45, column 19, lines 16-26, 40-49, column 20, lines 27-31, 46-48).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method for assisting an individual of Brown300 to include affixing a physiological monitoring device in proximity to the body of the individual and generating data indicative of one or more measured parameters of said individual using said device, as taught by Alyfuku, with the motivations of providing a networked vital information health monitoring system which is user-friendly and which is capable of detecting and monitoring vital signs passively in response to routine day-to-day physiological activities of individuals thereby to provide updated latest vital information, without causing the individuals to realize measurement, and thereby to provide a reliable vital information, which is useful in supporting home health care and maintenance for the purposes of prevention and early detection of diseases and continuation of therapy (Alyfuku; column 1, lines 56-67, column 6, lines 42-45).

(B) Claim 124 differs from claim 104 by reciting a method that includes using data indicative of one or more measured parameters to determine the relative degree of achievement of said individual's performance with relation to said physiological status goal rather than

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including using data indicative of one or more measured parameters to determine status information indicative of the relative degree of achievement of said individual's performance.

As per claim 124, Brown300 and Alyfuku teach a method for assisting an individual to monitor, control and modify certain aspects of the individual's physiological status according to a preset physiological status goal, the method comprising:

establishing said physiological status goal according to certain preselected physiological parameters of said individual (Brown300; column 2, lines 57-67, column 6, lines 26-29, column 6, line 62 to column 7, line 18);

affixing a physiological monitoring device in proximity to the body of the individual (Alyfuku; see at least Abstract, Figure 11, Item 91, Figure 19, Item 89, column 1, lines 7-17, column 3, lines 20-31, column 4, line 30 to column 5, line 7, column 8, lines 45-51, column 11, line 59 to column 12, line 4, column 12, line 54 to column 13, line 2, column 14, line 52 to column 16, line 2, column 15, lines 9-25, column 17, lines 35-45, column 19, lines 16-26, 40-49, column 20, lines 27-31, 46-48);

generating data indicative of one or more measured parameters of said individual using said device (Alyfuku; see at least Abstract, Figure 11, Item 91, Figure 19, Item 89, column 1, lines 7-17, column 3, lines 20-31, column 4, line 30 to column 5, line 7, column 8, lines 45-51, column 11, line 59 to column 12, line 4, column 12, line 54 to column 13, line 2, column 14, line 52 to column 16, line 2, column 15, lines 9-25, column 17, lines 35-45, column 19, lines 16-26, 40-49, column 20, lines 27-31, 46-48);

using said data indicative of one or more measured parameters to compare target parameters to actual parameters (reads on determine the relative degree of achievement of said

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individual's performance with relation to said physiological status goal) (Brown300; see at least Figure 3A, Item 32, column 1, lines 26-36, column 2, lines 6-9, column 2, line 57 to column 3, line 45 , column 5, lines 38-43, column 6, line 34 to column 7, line 18); and

providing to said individual a treatment plan (reads on information indicative of a suggested change in said individual's performance to assist said individual in the achievement of said physiological status goal) (Brown300; see at least Figure 3A, Item 32, column 1, lines 26-36, column 2, lines 6-9, column 2, line 45 to column 3, line 45 , column 5, lines 38-43, column 6, line 34 to column 7, line 18).

The motivations for combining the respective teachings of Brown300 and Alyfuku are as given in the rejection of claim 104 above, and incorporated herein.

(C) As per claims 105-108, Brown300 and Alyfuku teach a method as analyzed and discussed in claim 104 above

wherein said physiological status goal comprises a plurality of categories (Alyfuku; see at least Figure 3A, column II, column 3, line 65 to column 4, line 37, column 8, lines 45-52, column 11, line 59 to column 12, line 4);

wherein said status information is determined and provided with respect to each of said categories (Alyfuku; see at least Figure 3A, column II, column 3, line 65 to column 4, line 37, column 8, lines 45-52, column 11, line 59 to column 12, line 4);

wherein said categories relate to two or more of nutrition, activity level, mind centering sleep, and daily activities (Alyfuku; see at least Figure 3A, column II, column 3, line 65 to column 4, line 37, column 8, lines 45-52, column 11, line 59 to column 12, line 4); and

wherein said providing step comprises providing at least a portion of said status information in graphical form (Alyfuku; see at least Figure 3A, column II, Figure 41, Items S289 and S 296, Figure 48, Item S357, Figure 57, Item S507, Figure 58, Item S529 , column 8, lines 45-61).

(D) As per claims 109-112, 114, 117, 119, 125-127, 137, 139, 142, 144, Brown300 and Alyfuku teach a method as analyzed and discussed in claims 104 and 124 above

wherein at least two sensors selected from the group consisting of physiological sensors and contextual sensors are in electrical communication with said device, said sensors generating data indicative of at least a first parameter and a second parameter of said individual (Alyfuku; see at least Figure 19, Item 89, Figure 11, Item 91, column 8, lines 25-29, 45-52, column 14, line 52 to column 16, line 2, column 11, line 59 to column 12, line 4, column 12, line 54 to column 13, line 2, column 15, lines 9-25, column 17, lines 35-45, column 19, lines 16-26, 40-49, column 20, lines 27-31, 46-48);

said generating step further comprising generating derived data based on said data indicative of at least a first parameter and a second parameter, said derived data comprising a third parameter of said individual, said third parameter being an individual status parameter that cannot be directly detected by any of said at least two sensors, said one or more measured parameters including said third parameter (Alyfuku; Figure 11, Item 91, Figure 20, Figure 21, Figure 22, column 11, line 59 to column 12, line 4, column 12, line 54 to column 13, line 2, column 14, line 52 to column 16, line 2, column 17, line 35 to column 18, line 46, column 19, lines 16-26, 40-49, column 20, lines 27-31, 46-48);

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said data indicative of one or more measured parameters including said data indicative of at least a first parameter and a second parameter, said using step further comprising generating derived data based on said data indicative of at least a first parameter and a second parameter, said derived data comprising a third parameter of said individual, said third parameter being an individual status parameter that cannot be directly detected by any of said at least two sensors and using at least said third parameter to determine said status information and said relative degree of achievement (Alyfuku; Figure 11, Item 91, Figure 20, Figure 21, Figure 22, column 11, line 59 to column 12, line 4, column 12, line 54 to column 13, line 2, column 14, line 52 to column 16, line 2, column 17, line 35 to column 18, line 46, column 19, lines 16-26, 40-49, column 20, lines 27-31, 46-48); and

said at least two sensors being chosen from the group consisting of respiration sensors, temperature sensors, heat flux sensors, body conductance sensors, body resistance sensors, body potential sensors, brain activity sensors, blood pressure sensors, body impedance sensors, body motion sensors, oxygen consumption sensors, body chemistry sensors, body, position sensors, body pressure sensors, body impedance sensors, body motion sensors, oxygen consumption sensors, body chemistry sensors, body position sensors, body pressure sensors, light absorption sensors, piezoelectric sensors, electrochemical sensors, strain gauges, and optical sensors (Alyfuku; see at least Figure 41, Item S288, column 3, line 65 to column 4, line 29); and

wherein said derived data comprises data relating to at least one of activity level, sleep, nutrition, stress level and relaxation level (Alyfuku; see at least Figure 3A, column II, column 3, line 65 to column 4, line 37, column 8, lines 45-52, column 11, line 59 to column 12, line 4).

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8. Claims 113, 118, 138, 143 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, U.S. Patent Number 5, 951, 300, hereinafter known as Brown300, in view of Alyfuku et al, U.S. Patent Number 5, 410, 471 as applied to claim 104 above, and further in view of Korenman et al, U.S. Patent Number 6, 067, 468.

(A) As per claims 113, 118, 138, 143, Brown300 and Alyfuku teach a method as analyzed and discussed in claims 104 and 109-110, 124 and 127 above.

Brown300 and Alyfuku fail to explicitly disclose

said at least two sensors being chosen from the group consisting of body motion sensors adapted to generate data indicative of motion, a skin conductance sensors adapted to generate data indicative of the resistance of said individual's skin to electric current, heat flux sensors adapted to generate data indicative of heat flow, body potential sensors adapted to generate data indicative of heart beats of said individual, and temperature sensors adapted to generate data indicative of a temperature of said individual's skin said data indicative of at least a first parameter and a second parameter comprising at least two of said data indicative of motion said data indicative of resistance of said individual's skin to electric current said data indicative of heat flow, said data indicative of heart beats and said data indicative of a temperature of said individual's skin.

However, the above features are well-known in the art, as evidenced by Korenman.

In particular, Korenman teaches said at least two sensors being chosen from the group consisting of body motion sensors adapted to generate data indicative of motion, a skin conductance sensors adapted to generate data indicative of the resistance of said individual's skin

to electric current, heat flux sensors adapted to generate data indicative of heat flow, body potential sensors adapted to generate data indicative of heart beats of said individual, and temperature sensors adapted to generate data indicative of a temperature of said individual's skin said data indicative of at least a first parameter and a second parameter comprising at least two of said data indicative of motion said data indicative of resistance of said individual's skin to electric current said data indicative of heat flow, said data indicative of heart beats and said data indicative of a temperature of said individual's skin (Korenman; see at least Abstract, Figure 1, Figure 2C, Figure 3, column 2, lines 31-38, column 3, lines 35-46, column 4, lines 6-31, column 6, lines 26-56).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method for assisting an individual of Brown300 and Alyfuku to include said at least two sensors being chosen from the group consisting of body motion sensors adapted to generate data indicative of motion, a skin conductance sensors adapted to generate data indicative of the resistance of said individual's skin to electric current, heat flux sensors adapted to generate data indicative of heat flow, body potential sensors adapted to generate data indicative of heart beats of said individual, and temperature sensors adapted to generate data indicative of a temperature of said individual's skin said data indicative of at least a first parameter and a second parameter comprising at least two of said data indicative of motion said data indicative of resistance of said individual's skin to electric current said data indicative of heat flow, said data indicative of heart beats and said data indicative of a temperature of said individual's skin, as taught by Korenman, with the motivations of testing an aspect of a user's physiological condition which provides an information display which may be viewed by the user

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and which provides information about the user's current condition, and to display to the user an indication of the physiological parameters measured (Korenman; column 2, lines 2-23, column 3, lines 21-24).

9. Claims 115-116, 120-121, 140-141, 145-146 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, U.S. Patent Number 5, 951, 300, hereinafter known as Brown300, in view of Alyfuku et al, U.S. Patent Number 5, 410, 471 and Korenman et al, U.S. Patent Number 6, 067, 468 as applied to claims 104, 113 and 118 above, and further in view of Pottgen et al, U.S. Patent Number 5, 813, 994 and Nasiff, U.S. Patent Number 4, 757, 453.

(A) As per claims 115, 120, 140, 145, Brown300, Alyfuku and Korenman teach a method as analyzed and discussed in claims 104, 113, 118, 124 and 138 above.

Brown300, Alyfuku and Korenman fail to explicitly disclose wherein said derived data comprises data relating to calories burned and is based on at least said data indicative of motion and said data indicative of heat flow.

However, the above features are well-known in the art, as evidenced by Pottgen.

In particular, Pottgen teaches wherein said derived data comprises data relating to calories burned and is based on at least said data indicative of heat flow (Pottgen; see at least Abstract, column 2, line 61 to column 3, line 21, column 5, lines 11-41).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method for assisting an individual of Brown300, Alyfuku and Korenman to include wherein said derived data comprises data relating to calories burned and is

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based on at least said data indicative of heat flow, as taught by Pottgen, with the motivations of monitoring caloric expenditure, by measuring components of heat flow, since the determination of caloric expenditure is an important component of any weight control or fitness program (Pottgen; column 1, lines 19-21, column 2, lines 21-47).

Brown300, Alyfuku and Korenman fail to explicitly disclose wherein said derived data is based on at least said data indicative of motion.

However, the above features are well-known in the art, as evidenced by Nasiff.

In particular, Nasiff teaches wherein said derived data comprises data relating to calories burned and is based on at least said data indicative of motion (Nasiff; see at least Abstract, column 2, line 13 to column 3, line 14).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combined art of Brown300, Alyfuku and Korenman to include wherein said derived data comprises data relating to calories burned and is based on at least said data indicative of motion, as taught by Nasiff, with the motivations of providing a body activity monitor to be used for extended periods of time and during all normal daily activities that gives continuous energy expenditure data, is comfortable to the patient, be easily applied to the patient, and measures total body activity as directly as possible, including measuring the work done [calories used] by the motion of the major moving elements of the body (Nasiff; column 1, lines 15-26, column 2, lines 13-37).

(B) As per claims 116, 121, 141, 146, Brown300, Alyfuku, Korenman, Pottgen, and Nasiff teach a method as analyzed and discussed above

wherein said derived data is also based on said data indicative of resistance of said individual's skin to electric current (Korenman; see at least Abstract, Figure 1, Figure 2C, Figure 3, column 2, lines 31-38, column 3, lines 35-46, column 4, lines 6-31, column 6, lines 26-56).

10. Claim 122 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, U.S. Patent Number 5, 951, 300, hereinafter known as Brown300, and Alyfuku et al, U.S. Patent Number 5, 410, 471 as applied to claim 104 above, and further in view of Brown et al, U.S. Patent Number 6, 032, 119, hereinafter known as Brown119.

(A) As per claim 122, Brown300 and Alyfuku teach a method as analyzed and discussed in claim 104 above.

Brown300 and Alyfuku fail to explicitly disclose a method further comprising the step of aggregating said data indicative of one or more measured parameters with data collected from a plurality of individuals to create aggregate data.

However, the above features are well-known in the art, as evidenced by Brown119.

In particular, Brown119 teaches a method further comprising the step of aggregating said data indicative of one or more measured parameters with data collected from a plurality of individuals to create aggregate data (Brown119; column 2, line 60 to column 3, line 8, column 3, line 59 to column 4, line 9, column 7, lines 19-39).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method for assisting an individual of Brown300 and Alyfuku to include the step of aggregating said data indicative of one or more measured parameters with data collected from a plurality of individuals to create aggregate data, as taught by Brown119, with

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the motivations of collecting a subset of the data set from the set of inputs, allowing a reduction in the number of direct connections between the processing means and the inputs and utilizing the data aggregation means for storing data for multiple patients for use in epidemiological research (Brown119; column 2, line 67 to column 3, line 8, column 3, line 59 to column 4, line 9).

11. Claim 123 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, U.S. Patent Number 5, 951, 300, hereinafter known as Brown300, and Alyfuku et al, U.S. Patent Number 5, 410, 471 and Brown et al, U.S. Patent Number 6, 032, 119, hereinafter known as Brown119, as applied to claims 104 and 122 above, and further in view of Brown et al, U.S. Patent Number 5, 913, 310, hereinafter known as Brown310.

(A) As per claim 123, Brown300, Alyfuku and Brown119 teach a method as analyzed and discussed in claims 104 and 122 above.

Brown300, Alyfuku and Brown119 fail to explicitly disclose a method further comprising the step of creating aggregate data reports based on said aggregate data.

However, the above features are well-known in the art, as evidenced by Brown310.

In particular, Brown310 teaches a method further comprising the step of creating aggregate data reports based on said aggregate data (Brown310; column 20, lines 35-45).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method for assisting an individual of Brown300, Alyfuku and

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Brown119 to include the step of creating aggregate data reports based on said aggregate data, as taught by Brown310, with the motivations of statistically analyzing the data for use in epidemiological research (Brown310; column 20, lines 35-45).

12. Claims 128-136 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, U.S. Patent Number 5, 951, 300, hereinafter known as Brown300, and Alyfuku et al, U.S. Patent Number 5, 410, 471 as applied to claim 124 above, and further in view of McIlroy et al, U.S. Patent Number 5, 583, 758.

(A) As per claim 128, Brown300 and Alyfuku teach a method as analyzed and discussed in claim 124 above.

Brown300 and Alyfuku fail to explicitly disclose a method wherein said information indicative of a suggested change in said individual's performance being based on aggregate data collected from a plurality of individuals.

However, the above features are well-known in the art, as evidenced by McIlroy.

In particular, McIlroy teaches a method wherein said information indicative of a suggested change in said individual's performance being based on aggregate data collected from a plurality of individuals (McIlroy; see at least Figure 24A, column 2, line 9 to column 3, line 25, column 7, lines 13-52, column 9, line 60 to column 10, line 58, column 18, line 46 to column 19, line 7).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method for assisting an individual of Brown300 and Alyfuku to include wherein said information indicative of a suggested change in said individual's performance being based on aggregate data collected from a plurality of individuals, as taught by McIlroy, with the motivations of providing a diagnosis-based system that can be used during various steps of the clinical decision process (1) prospectively, before treatment, when an individual presents a health concern; (2) concurrently, at any stage of existing treatment; and (3) retrospectively, after treatment has been provided by building from a database of diagnosis-based guidelines developed by medical professionals and guiding the user to treatment based on the information collected (McIlroy; column 2, lines 9-65).

(B) As per claims 129-136, Brown300, Alyfuku and McIlroy teach a method as analyzed and discussed in claim 128 above wherein

said information indicative of a suggested change being further based on information obtained from a third party source (McIlroy; see at least Figure 24A, column 2, line 9 to column 3, line 25, column 7, lines 13-52, column 9, line 60 to column 10, line 58, column 18, line 46 to column 19, line 7);

said third party source comprises a computer and wherein said providing step is automated using said computer (McIlroy; see at least Figure 24A, column 2, line 9 to column 3, line 25, column 7, lines 13-52, column 9, line 60 to column 10, line 58, column 18, line 46 to column 19, line 7);

said third party source comprises a person(McIlroy; see at least Figure 24A, column 2, line 9 to column 3, line 25, column 7, lines 13-52, column 9, line 60 to column 10, line 58, column 18, line 46 to column 19, line 7); and

said third party source comprises a computer and a person and wherein said providing step is automated using said computer (McIlroy; see at least Figure 24A, column 2, line 9 to column 3, line 25, column 7, lines 13-52, column 9, line 60 to column 10, line 58, column 18, line 46 to column 19, line 7).

Response to Arguments

13. Applicant's arguments with respect to claims 104 to 146 have been considered but are moot in view of the new ground(s) of rejection.

(A) At pages 18-20 of the 28 November 2003 response, Applicant argues that the features in the Application are not taught or suggested by the applied references. In response, all of the limitations which Applicant disputes as missing in the applied references, including the newly added features in the 28 November 2003 amendment, have been fully addressed by the Examiner as either being fully disclosed or obvious in view of the collective teachings of Brown300, Alyfuku, Korenman, Pottgen, Nasiff, Brown119, Brown310, and McIlroy , based on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in the remarks and explanations given in the preceding sections of the present Office Action and in the prior Office Action (paper number 9), and incorporated herein. In particular, Examiner notes that the recited features of establishing a physiological

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status goal according to certain preselected physiological parameters of an individual, determining status information indicative of the relative degree of achievement of said individual's performance with relation to said physiological status goal, and providing said status information to said individual are taught by the combination of applied references (Brown300; see at least Figure 3A, Item 32, column 1, lines 26-36, column 2, lines 6-9, column 2, line 57 to column 3, line 45 , column 5, lines 38-43, column 6, line 26 to column 7, line 18).

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. **Any response to this final action should be mailed to:**

Box AF

Commissioner of Patents and Trademarks
Washington D.C. 20231

or faxed to:

Art Unit: 3626

(703) 305-7687.

For formal communications, please mark
"EXPEDITED PROCEDURE".

For informal or draft communications, please
label "PROPOSED" or "DRAFT" on the front
page of the communication and do NOT sign
the communication.

Hand-delivered responses should be brought to
Crystal Park 5, 2451 Crystal Drive, Arlington,
VA, Seventh Floor (Receptionist).

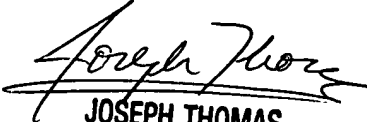
16. Any inquiry concerning this communication or earlier communications from the
examiner should be directed to Natalie A. Pass whose telephone number is (703) 305-3980. The
examiner can normally be reached on Monday through Thursday from 9:00 AM to 6:30 PM. The
examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, Joseph Thomas, can be reached at (703) 305-9588. Any inquiry of a general nature
or relating to the status of this application or proceeding should be directed to the Receptionist
whose telephone number is (703) 308-1113.

NP

Natalie A. Pass

February 20, 2004


JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600